IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11072 of 2000

With

CIVIL APPLICATION NO 3591 OF 2001

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SAURABH DINESHCHANDRA JANSARI THRO' FATHER & GUARDIAN

Versus

STATE OF GUJARAT

Appearance:

MR HJ NANAVATI for Petitioner

MS NANDINI JOSHI,AGP for Respondent No. 1

MR SM MAZGAONKAR for Respondent No. 2

RULE SERVED BY DS for Respondent No. 3

MR NV ANJARIA for Respondent No. 4

MR AD OZA for Respondent No.5

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 02/07/2001

CAV JUDGEMENT

1. Saurabh Dineshchandra Jansari, through his father and guardian Shri. Dineshchandra P. Jansari filed the present petition for a direction on the Regional Engineering College, Durgapur and Burdwan University to admit him in First Year B.E. course in Chemical Engineering. It is stated that the petitioner appeared in 12th standard examination conducted by Gujarat Secondary Education Board and he was declared passed by the Board, condoning the less marks he obtained in English subject. The petitioner filed the application for admission in Regional Engineering College and have opted for Chemical Engineering. He was called for interview at L.D. Engineering College, Ahmedabad and he was selected for admission in Regional Engineering College, Durgapur in First Year B.E. Course in Chemical Engineering. On selection, petitioner paid a sum of Rs.400/- to Sardar Vallabhbhai Regional College of Engineering And Technology, Surat. On the basis of payment, the Chairman Admission Committee addressed letter to the Principal, Regional Engineering College, Durgapur about petitioner's selection, but the Regional Engineering College (REC), Durgapur declined to give admission to the petitioner on the ground that, though the petitioner has been declared passed by Gujarat Secondary Education Board, he did not pass in English subject by securing minimum marks of 35, and he got 27 marks in English which was condoned by the Board and was declared passed. The REC Durgapur sent a fax message to REC Surat, seeking clarification about the term "Condonation" or " Deficiency Condoned". The REC, Surat in reply to REC, Durgapur, intimated that, the candidate passed 12th standard examination and he is eligible for admission in B.E. as recommended by the Selection Committee. Thereafter REC, Durgapur, referred the matter to the University of Burdwan, where the candidate is to be registered. The University of Burdwan intimated REC Durgapur, that the petitioner cannot be permitted to be registered under University of Burdman for admission in engineering course, as he has not secured the minimum pass mark of 35 % in English subject. The REC Durgapur has forwarded the letter of Burdman University to REC Surat. That, no reply appeared to have been given to the letter of the University by REC, Surat. Thereafter the petitioner approached the REC, Surat, and accordingly petitioner was again called for interview for admission in Engineering College by the State Government, but the petitioner did not take any chance for admission in any of the Engineering Colleges in Gujarat.

2. Gujarat Secondary Education Board made Regulations regarding the minimum marks to be obtained

for passing higher secondary education. There is a provision in the Regulations that, if a candidate do not get the minimum percentage in any particular subject, but he has secured pass marks in other subjects, then the minimum total marks obtained by a candidate is considered and is declared passed after condoning the deficiency in the subject in which he has failed to secure minimum pass marks. The Board do not add any grace mark to the student as that will create an imbalance to the marks for the students who have passed in all subjects. It is contended by the petitioner that, when he has passed higher secondary education, he has satisfied the eligibility criteria for admission in REC, Durgapur, and therefore, there is no reason to deny admission to the petitioner in REC, Durgapur. Accordingly the petitioner seeks for a direction to Burdwan University to register him for B.E. course.

3. The REC Durgapur and Gujarat Secondary Board have filed separate reply. REC Surat has also filed their reply. REC Surat, Respondent No.2, has stated in their reply that, it is an admitted fact that the petitioner has been declared passed by Gujarat Secondary Education Board after condoning the deficiency in English subject in which he has secured 27 marks, although minimum pass mark is 35. It is also stated that the REC Durgapur is affiliated to Burdwan University and the student who wants to take admission in REC Durgapur has to register his name with Burdwan University. It is also stated by respondent No.2 that, admission offered by REC Durgapur, is provisional as the candidates from various RECs are required to obtain eligibility from respective University to which those colleges are affiliated. It is also stated that when Burdwan University refused to register the petitioner admission in B.E. course, REC Surat informed the petitioner and had requested the Centralised Admission Committee for Engineering Colleges in Guajrat State to consider the petitioner for admission in any of the State Engineering Colleges, according to his merit.

4. REC Durgapur, Respondent No. 4 in their reply denied the allegations made by the petitioner. It is stated that the norms for eligibility for admission in REC Durgapur have been laid down by West Bengal Board of Examination and accordingly a candidate must have passed 10 + 2 examination of West Bengal Council of High Secondary Education with Physics, Chemistry, Mathematics and English or any equivalent examination having secured minimum pass marks in each of those subjects. It is stated that the petitioner has obtained only 27 marks in English and minimum pass mark in English is 35. It is

therefore contended by REC Durgapur that, the petitioner do not satisfy the eligibility criteria for admission to First Year B.E. The expert committee consisting of 16 members considered the case of the petitioner and came to the conclusion that, he is not eligible for admission in First Year B.E. The petitioner was declared passed by Gujarat Secondary Education Board by condoning the deficiency marks in English. The REC Durgapur referred the matter to the University of Burdwan by letter dated 9-9-2000 (Annexure-IV to the affidavit). According to the decision of Executive Council of the Burdwan University the petitioner is ineligible to be registered as he has not passed in English subject in higher secondary education. The decision of the University was communicated to REC, Surat. It is further submitted that the first year semester of B.E. course commenced from 17-8-2000 and was over on 12-2-2001 (Annexure-VII to the affidavit). The second semester has begun on 21-2-2001 and the examination for 2nd semester is also over. From this point of view, REC Durgapur submitted that, at this belated stage when the session is going to be almost over for the entire first year the student cannot be admitted. It is also stated that the petitioner did not attend any class of first semester. Even after the interim order passed by the High Court the petitioner has never attended any class of the first year B.E. course in Durgapur REC. Since the second semester is also going to be over, it is difficult for the REC, Durgapur to admit the student on this ground also.

5. Gujarat Secondary Education Board, Respondent No.5 has filed its reply and denied all the contentions made in the petition. Respondent No.5 Board has filed reply wherein they have stated that the petitioner obtained 27 marks in English. However the Board has declared passed the petitioner by condoning deficiency of 8 marks in the said subject. The Board has condoned the marks as per Regulation 29 of the Higher Secondary Certificate Examination Regulation, 1977, which reads :-

(1) If a candidate excepting isolated candidates fails by not more than eight marks in not more than two subjects taken together such deficiency shall be condoned.

(2) If a candidate who appears in all the subjects required for obtaining the Higher Secondary Certificate at one and the same examination fails in one or two subject. the total of his deficiency in marks in one subject or both the subjects upto a maximum of 15 marks

in aggregate shall be condoned on the basis of one mark for every one percent by which the total marks secured by him in all the subjects exceed 35 percent of the maximum number of marks obtainable in those subjects. For this half a percent or more shall be rounded to the next whole percent.

(3) A candidate may be given benefit of condonation under either clause (1) or under clause (2) above but not under both the clauses. "

The Board has further submitted that the purpose of declaring a student passed after condoning the deficiency is to save one academic year of a student. Board do not add any mark in the total marks obtained by a student with a view that injustice may not be caused to other students in that event. If the Board add grace marks than other students obtaining equivalent marks of their own merit will suffer, and same will cause great injustice to them. Hence Board has made provision for condoning deficiency of marks without adding any grace mark in a particular subject when there is deficiency. The Board has declared the petitioner passed as per the Regulations framed by the Board.

6. Mr. Nanavati, learned counsel appearing on behalf of the petitioner after drawing my attention to Annexure-C submitted that, Sardar Vallabhbhai Regional College of Engineering & Technology, Surat, by its letter dated 27-8-2000 intimated the Principal, REC Durgapur that the petitioner has been provisionally selected for admission to first year B.E. course and has deposited a sum of Rs.400/- being S.C. candidate as advance fee. The details of the candidate in Annexure-C indicate that he has been provisionally selected for admission in first year B.E. in Chemical Engineering and the petitioner has been directed to report to REC, Durgapur on/or before 10-9-2000 for taking admission in the said institute. Mr. Nanavati also draws my attention to Annexure-A, the marksheet issued by Gujarat Secondary Education Board, Gandhinagar, where from it appears that, the candidate has been declared passed secondary examination with the remarks that the deficiency in the English subject has been condoned. Mr. Nanavati accordingly argued that there is no dispute that the petitioner has passed Higher Secondary Examination from Gujarat Secondary Education Board and eligibility for admission in REC, Durgapur is pass in 10 + 2 higher secondary examination with Physics, Chemistry, Mathematics and English. It is submitted by

Mr. Nanavati that the marksheet of the petitioner (Annexure-A) indicates that, in the higher secondary he appeared in Physics, Chemistry, Mathematics and English. Accordingly Mr. Nanavati submitted that since the petitioner has passed higher secondary examination with said subjects from Gujarat Secondary Education Board, and therefore, he has satisfied the educational qualification prescribed by REC Durgapur for admission in first year B.E. course. The denial by the REC Durgapur and Burdwan University to which the said college is affiliated to admit students in first year B.E. is illegal and therefore, REC Durgapur and Burdwan University Respondent No. 3 & 4 respectively should be directed to admit the petitioner in first year B.E. in Chemical Engineering. It is true that the petitioner has been declared passed in the higher secondary examination but the marksheet issued by the Guajrat Secondary Education Board (Annexure-A) indicates that the petitioner has obtained 27 marks in English. According to the Higher Secondary Examination (Regulations) 1977, framed by the Gujarat Secondary Education Board, the minimum marks for passing in English is 35. The petitioner has obtained 27 marks, therefore as per Regulations framed by the Gujarat Higher Secondary Education Board, it cannot be said that the petitioner has passed English subject after securing minimum 35 marks. Mr. Nanavati contended that, even though the petitioner has not passed in English, but he has passed the higher secondary examination after condoning the deficiency in mark s and consequently he has fulfilled the eligibility criteria for admission in first year B.E.couse. Mr. Nanavati accordingly submitted that the petitioner has fulfilled the eligibility criteria for admission, there is no reason for the REC Durgapur and Burdwan University to deny admission to the petitioner. The Burdwan University Respondent no.4 did not agree to register the candidate on the ground that he has not passed in English after securing the minimum marks prescribed for the said subject by the Gujarat Secondary Education Board. The Academic Council of Burdwan University indimated the REC Durgapur, that, since the petitioner has not passed in the English subject after securing minimum pass mark of 35, he cannot be said to have fulfilled the educational qualification prescribed by the institute and University for admission in first year B.E. course.

7. The Rules & Regulations of Burdwan University prescribes that in higher secondary examination a candidate must have obtained minimum pass marks in all the subjects, otherwise he cannot be treated by Burdwan University as having passed the higher secondary

examination. Accordingly the Burdwan University has treated the petitioner as passed higher secondary examination after condoning the deficiency of marks in English subject. Burdwan University communicated its decision to REC Durgapur and REC Durgapur by its letter dated 19-9-2000 (Annexure-D) communicated the Principal of Sardar Vallabbhai Regional College of Engg. & Technology, Surat , that the executive council of the University of Brudwan intimated that the petitioner cannot be permitted to get himself registered under University of Burdwan for admission to B.E. degree course as the candidate could not secure the minimum pass marks in English, though the Gujarat Secondary Education Board has declared the candidate " Pass " by condoning deficiency without increasing the marks in failed subject, i.e. in English. It further appears from Annexure-D that the Co-Chairman of the Admission Committee of REC, Surat, requested the Gujarat Centralised Admission Committee that the petitioner's provisional admission in REC Durgapur, has been cancelled and therefore, the admission committee may consider the case of the petitioner for admission in Gujarat State. It appears that, in spite of the aforesaid letter the petitioner without making any efforts to take admission in any of the engineering colleges in Gujarat, insisted that, he should be admitted in REC Durgapur in first year B.E. in Chemical Engineering and since the REC Durgapur has refused the petitioner, ultimately filed this case for a direction on REC Durgapur and Burdwan University to admit him in firs year B.E. in Chemical Engineering.

8. The question in the present case is not whether the candidate has passed higher secondary examination, but the important question that requires a decision is whether the petitioner has fulfilled the educational qualification prescribed by REC, Durgapur and Burdman University for admission in first year B.E. in REC, Durgapur. The West Bengal Board of Examinations For Admission to Engineering, Medical And Technological Degree Colleges Rules provides that for admission in REC Durgapur, the minimum eligibility is pass in " 10 + 2 Higher Secondary Examination" with Physics, Chemistry, Mathematics and English. Having secured minimum pass marks in each individual subject, though West Bengal Board Examinations For Admission to Engineering, Medical & Technological Degree Colleges Rules prescribes that a candidate shall have to pass each of the subjects securing minimum marks, the REC Durgapur in its General Information (Exhibit-1) did not say in so many words that the petitioner will have to pass securing minimum marks in each of the aforesaid subjects. Therefore, it appears

that the requirements of West Bengal Board Examinations Rules do not show same eligibility as shown by REC Durgapur in their general information. However, the Burdwan University have their own Rules & Regulations for registration of candidates. It is an admitted fact that the REC Durgapur is affiliated to Burdwan University and according to Burdwan University Rules & Regulations they do not treat any candidate to have passed the higher secondary examination if they do not pass in the higher secondary examination after securing minimum marks in all the subjects they have appeared in the Higher Secondary Examination. It is obligatory for each student admitted in REC Durgapur, to get registration with the Burdwan University as the final degree is awarded by the Burdwan University. Now the Rules & Regulations of the Burdwan University do not permit registration of a student who has not passed the higher secondary examination after securing minimum marks prescribed by different recognised Boards in Higher Secondary Examination. Guajrat Secondary Edcuation Board prescribed minimum pass marks in English as 35. The petitioner has secured 27 marks, therefore the contention of the Burdwan University is that the petitioner has not passed in English and therefore, according to Burdwan Unvieristy the candidate cannot be said to have passed Higher Secondary Education, therefore the Universuty has refused the registration to the petitioner.

9. It is true that the General Information published by REC Durgapur, at exhibit-1 to the counter of respondent No.2 do not specifically state that a candidate will have to pass higher secondary examination securing minimum pass marks in Physics, Chemistry, Mathematics and English. But the rules of Best Bengal Board of Examinations for Engineering,Medical, & Technological Degree Courses and the General Information published by REC Durgapur is concerned, it is clear that the requirement for admission in first year B.E. is "unqualified" pass in higher secondary examination. Now the question is whether the petitioner has passed higher secondary examination in 'unqualified' terms. From the marksheet (Annexure-A) it appears that the Guajrat Secondary education Board has declared the petitioner as passed in higher secondary examination after condoning the deficiency in English subject. It is an admitted fact that as per Gujarat Higher Secondary Education Board Regulations, the petitioner did not secure minimum pass mark of 35 in English and he has obtained only 27 marks. Therefore it cannot be said that the petitioner has passed in English. Gujarat Secondary Education Board in their Regulations has also provisions that even if a

candidate failed to pass in any of the subjects and on average he secures 40 percent marks, then the deficiency in the failed subject can be condoned and the candidate can be declared to have passed the higher secondary examination. Consequently it is clear that the passing of the petitioner in the higher secondary examination is not 'unqualified' and he has been declared passed after condoning the deficiency in English subject. The Burdwan University do not recognise such 'qualified' pass for the purpose of admission in first year B.E. of the REC Durgapur. Whetehr a candidate fulfills the minimum educational qualification for admission to any particular professional degree course is left at the discretion of the the Institutes, Universities and Academic Bodies to determine the qualifications of examinations for the purpose of admission in the educational institutions. It is not for this Court to enter into the exercise of determining " equivalents " of examination if the rules & regulations of the Burdwan University do not recognise a pass in higher secondary examination after condoning the deficiency and that, it cannot be said that the rules & regulations of Burdwan University as bad and this Court cannot decide or determine this question. It is a settled law that, even if two views are possible on interpretation of certain clause, resolutions, statutes, regulations or ordinances of the University in relation to academic matters, the interpretation or decision which has been taken by the Academic Bodies should not be interfered by the Courts. It is an admitted fact that the petitioner did not pass in subject of English by securing minimum marks of 35 as prescribed by Gujarat Secondary Education Board. In such a situation if Burdwan University according to their Rules & Regulations do not permit such a candidate for admission in first year B.E. course in REC Durgapur, I am of the view that such a decision of the University cannot be interfered. If a 'pass' after condoning the deficiency is not considered by Burdwan University as pass in higher secondary examination, this Court cannot sit in appeal over the decision taken by the Burdwan University. The decision of the University must be followed.

10. There are other reasons for which I do not like to entertain this petition. Firstly the petitioner was intimated by REC Durgapur as back on 19-9-2000 that he cannot be admitted to first year B.E. course as the University of Burdwan has refused to register the candidate on the ground that he has failed to secure minimum pass marks in English. It further appears that the Co-Chairman, Admission Committee of Sardar Vallabhbhjai Regional College of Engg. & Technology,

Surat, requested the Guajrat Centralised Admission Committee to consider the case of the petitioner for admission in any of the engineering colleges in Gujarat State. But the petitioner did not take any steps for admission in any of the engineering colleges in the State of Guajrat through the Centralised Admission Committee. It further appears that the petitioner was not allowed to attend classes in REC Durgapur. Thereafter the petitioner filed the petition for a direction on REC Durgapur and Burdwan University for admission in first year B.E. course in REC Durgapur. After filing of the petition this Court passed an interim order directing the REC Durgapur, to allow the petitioner to attend the classes.

11. Mr. N.V. Anjaria, learned counsel appearing on behalf of the REC Durgapur submitted that, inspite of the interim order of the Court, petitioner did not attend the classes in REC Durgapur. It is further submitted by Mr. Anjaria that the first semester of first year B.E. course commenced on 17-8-2000 and the first semester was over on 12-2-2001. The first semester examination has already been held on 21-2-2001. It is also submitted by Mr. Anjaria that, in the meantime the second semester is also going to be over soon and every semester has different curriculum and syllabus. If any candidate is not admitted at the beginning of the academic session, he cannot obtain the minimum attendance as the classes for the first year B.E. of both the semesters are over, there is no scope to admit the petitioner in first year B.E. course in REC Durgapur at this stage.

12. Mr. Nanavati, learned counsel however argued that, if for the negligence of the institute the petitioner is not admitted at the beginning of the academic session, then, that will not prevent the Court from directing the institute to admit the student at any stage of the academic session. I cannot agree with the submission of Mr. Nanavati. To maintain excellence in academic course, the delay defeats the claim for admission. Eventhough for not admitting the petitioner one seat might have remained vacant, but such a vacancy cannot be a ground to direct the institute to admit the petitioner when the entire academic session is going to be over very soon and the first semester examination has already been over. It is an admitted fact that the engineering is a technical course and I am of the view that, no direction should be issued from admitting any candidate at a stage when the first semester examination is already over and the second semester is also going to be over very soon. I am, however, of the view, any

direction for admitting the petitioner at this stage would frustrate the excellence in academic course. Having regard to the facts & circumstances stated above, I am of the view that, there is no merit in the petition and it is liable to be dismissed, and accordingly the petition is dismissed.

13. Before parting with the case, I must mention that the petitioner is a S.C. candidate and even though he has not been registered by Burdwan University for admission to first year B.E. course in REC Durgapur, the petitioner is definitely eligible for admission in any colleges in the State of Gujarat according to his merit. Having regard to the fact that the petitioner has already lost one academic session, the Centralised Admission Committee may consider the case of the petitioner, for admission in any suitable course, according to his merit, in the present academic session (2001-2002).

14. With the aforesaid observations and directions present petition is dismissed. Rule discharged. Interim relief granted earlier stands vacated. However, I make no order as to costs.

15. Since the main petition is dismissed, no order is passed in Civil Application No. 3591 of 2001, and the same is disposed of accordingly.

Dt: 2-07-2001 (P.K. Sarkar, J)

/vgn.